

Appl No: 09/835,871
Amdt. dated: November 10, 2003
Reply to Office Action of May 8, 2003
Attorney Docket No. CIRC018

REMARKS/ARGUMENTS

Claims 1-16 and 21-23 are presented for examination and claims 17-20 have been withdrawn in response to a restriction requirement. Claims 1, 8, 21 and 22 are amended to more distinctly describe the subject matter of applicant's invention. No new matter is added by these amendments and the amendments are intended solely to clarify the claims and are not intended to affect the scope of the claims.

1. RESTRICTION AND ELECTION

The election of claims 1-16 and 21-23 without traverse is hereby confirmed. Claims 17-20 are withdrawn from consideration.

2. PRIORITY

The priority information stated in the Office Action is accurate.

3. REJECTIONS UNDER 35 U.S.C. 112

Claims 5 and 6 were rejected under 35 U.S.C. 112. This rejection is respectfully traversed.

In particular, the Office Action requests clarification of the term "topologically close" as it appears in the claims. While the term "topologically close" is a relative term, the use of relative terms in patent claims is far from prohibited. So long as a relative term provides a sufficient degree of definiteness the relative term is a proper way to phrase a claim. In this case, the specification refers to "topologically close" as states: "By 'close', 'topologically close' and 'logically close' it is meant that the average latency associated with a connection between a client 205 and a front-end 201 is less than the average latency associated with a connection between a client 205 and a data server 210." (page 14, lines 13-18). The term "topologically close" as it appears in claims 5 and 6 is consistent with this definition. Hence, use of this

term is definite and apprises those of skill in the art of the scope of the claimed invention.

As requested in the Office Action, all claims have been checked for clarification and are believed to be clear. Accordingly, it is requested that the rejection be withdrawn.

4. REJECTIONS UNDER 35 U.S.C. 102

1-4, 8-9, and 15-16 were rejected under 35 USC 102 based upon Nagatomo. This rejection is respectfully traversed.

Claims 1 and 8 call for, in varying language, one or more intermediary servers coupled to the network to receive requests from client applications, and a data storage mechanism coupled to the network at topological position that is unique from a topological position of the intermediary servers. At least these features of claim 1 are not shown or suggested in the Nagatomo reference.

Independent claims 1, and 8 are amended to clarify the meaning of an "intermediary server". The conventional meaning of the word "intermediary" refers to something that is between two or more other things. In this case, an intermediary sever is positioned between a client application and a data storage mechanism. In contrast, Nagatomo shows a data server that is integrated with and located at the identical topological position as the database. Hence, the Nagatomo data server 2 is not "intermediary" in the common meaning of that term nor in the sense that the term "intermediary" is used in the claims.

Moreover, to the extent that database 1 in Nagamoto is analogous to the data mechanism of claim 1, it is not coupled to the network. Instead, it is coupled to the data server 2, and can access the network only through data server 2.

The Office Action points to server 2 in the Nagatomo reference to show the claimed "intermediary server". Nagatomo identifies server 2 as the manager of database 1. In this sense, Nagatomo describes what is recognized in the instant specification as a system upon which the present invention improves. For example, in the paragraph bridging pages 14-15, the specification teaches that a particular advantage of the invention is that not only can the data itself be distributed, but the data service functionality and behavior is readily and dynamically ported to any of a number of intermediary computers in contrast to conventional database systems where the database functionality is confined to a particular server or limited set of servers. Nagatomo, in contrast, implements all data services in a single server 2 which is at the identical topological location as is the data server.

For at least these reasons, claims 1 and 8 are neither shown or suggested by Nagatomo. Similarly, dependent claims 2-4, 9, and 15-16 are allowable for at least the same reasons as claims 1 and 8 from which they depend.

Claims 21-23 were rejected under 35 USC 102 based upon Burdick. This rejection is respectfully traversed.

Claims 21 and 22 call for, in varying language, one or more intermediary servers coupled to the network to receive requests from client applications, and a data storage mechanism coupled to the network at topological position that is unique from a topological position of the intermediary servers. At least these features of claims 21 and 22 are not shown or suggested in the Burdick reference.

Burdick, like Nagamoto, fails to show or suggest an intermediary server that is located at a position that is unique from the data storage mechanism. Instead, Burdick shows a database server that is co-located with the data storage mechanism such that both devices share a single, common, network location. For

at least these reasons claims 21 and 22 as well as dependent claim 23 are allowable over Burdick et al.

Moreover, Burdick et al. does not teach the use of substitute content as called for in claims 21-23. Burdick et al. supply only the requested content, although the reference admits that the requested content may be at times delayed. For at least this reason, as well as the reasons stated above, claims 21-23 should be allowed over the relied on reference.

5. REJECTIONS UNDER 35 U.S.C. 103

Claims 5-7 and 10-14 were rejected under 35 U.S.C. 103 as unpatentable over Nagatomo in view of Colby. This rejection is respectfully traversed.

Claims 5-7 depend from claim 1 and are distinct with respect to Nagatomo for at least the reasons stated above. Colby does not show or suggest the modifications that would be required to implement an intermediary server in Nagatomo. Similarly, claims 10-15 depend from claim 8 and are not made obvious by Nagatomo in view of Colby for at least the same reasons as claim 8 set out above.

6. CONCLUSION

In view of all of the above claims 1-16 and 21-23 are believed to be allowable and the case in condition for allowance which action is respectfully requested. The references that were cited and not relied upon are believed to be no more pertinent than those references that were relied upon.

No fee is believed to be required by this response as determined on the accompanying transmittal letter. Should any other fee be required, please charge Deposit 50-1123. This response is filed with a request for a 3 month extension of

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time making the response due November 10, 2003 and authorization to charge the required fee to Deposit Account 50-1123.

Respectfully submitted,

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